

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 1:23-cr-40

Plaintiff,

HON. JANE M. BECKERING

v.

United States District Judge

RICK JOHNSON,

Defendant.

DEFENDANT RICK JOHNSON'S SECOND MOTION TO DELAY SELF-SURRENDER AND BRIEF IN SUPPORT

Defendant, Rick Johnson, through his counsel, Dondzila Law, PLLC, hereby moves for a report date later than December 2, 2023 and states as follows:

1. On October 17, 2023, the Court granted in part, and denied in part, Mr. Johnson's corrected motion to delay his self-surrender deadline. (ECF. No. 130). The result of the Order was that Mr. Johnson's report date to the Bureau of Prisons remained December 2, 2023.
2. Following entry of this Order, Mr. Johnson continued to treat with his medical team related to his October 4, 2023 coronary artery bypass grafting surgery performed by Dr. Brandon Wojcik at Munson Medical Center in Traverse City.
3. There is reason to be concerned about Mr. Johnson's health in advance of his scheduled December 2, 2023 report date.
4. On October 31, 2023, Dr. Wojcik saw Mr. Johnson for a post-operation appointment. Dr. Wojcik observed a low heart rate and high blood pressure.

Exhibit A. These conditions subsequently required monitoring and adjustment of Mr. Johnson's post-operative cardiac medications. *Id.*

5. In furtherance of his recovery and rehabilitation, Mr. Johnson's medical team has recommended cardiac rehabilitation therapy. Mr. Johnson is scheduled to participate in this program for up to 12 weeks. The program is intended to ensure Mr. Johnson's health is maintained.
6. Dr. Wojcik opines that this program should be completed before Mr. Johnson reports for incarceration. *Id.* This recommendation is reasonable because Mr. Johnson would benefit most from medical treatment administered by those familiar with his specific conditions and history.
7. In the event the necessary rehabilitation can be administered within BOP, Dr. Wojcik recommends a 10-pound lifting restriction until January 4, 2024 to avoid the risk of sternal dehiscence. *Id.*
8. Dr. Wojcik's opinions and recommendations are supported by the fact that Mr. Johnson was assigned in-home skilled nursing services following surgery.

Exhibit B. Mr. Johnson's skilled nursing services tapered down after the October 4, 2023 procedure, but he still receives this care once a week. These services are scheduled to conclude November 18, 2023.

9. Mr. Johnson's primary care physician agrees with Dr. Wojcik. Dr. Helen Kiomento, MD opines that it would be beneficial for Mr. Johnson to complete his rehabilitation before reporting to BOP. *Exhibit C.*

10. Additionally, Mr. Johnson is scheduled for a November 24, 2023 radiology ultrasound. Upon information and belief, this ultrasound is needed to evaluate the status of Mr. Johnson's chest and heart.

11. Based on the foregoing, Mr. Johnson remains in need of significant medical oversight. Two medical doctors familiar with his conditions opined as much. The importance of his upcoming therapy program cannot be overstated. Not engaging in this treatment would be detrimental to Mr. Johnson's health, and it would be against his doctor's treatment plan and opinions. *Exhibit A.*

12. It is unknown whether BOP can accommodate the level of care that Mr. Johnson requires, particularly at the specific facility he is ordered to surrender. There is reason to be concerned that BOP cannot meet this standard given Mr. Johnson's serious heart condition, age, low heart rate, high blood pressure, circulatory issues, and the unknown length of recovery.

13. There is inherent risk in Mr. Johnson receiving anything short of his current and projected treatment. Should Mr. Johnson be required to report on December 2, 2023, BOP is likely adopting a patient more than an inmate.

14. Additionally, BOP is inheriting a significant financial burden. While Mr. Johnson is about to commence a 12-week intensive cardiac therapy program, the future of Mr. Johnson's treatment is unknown. Given Mr. Johnson's risk factors, it is possible that additional treatment will be necessary.

15. Mr. Johnson's therapy, appointments, specialty consults, and potential future treatment are a heavy financial burden. These costs are currently carried by Mr. Johnson's health insurer.

16. In the alternative, and to the extent that the Court maintains commencement of Mr. Johnson's custodial period on December 2, 2023, Mr. Johnson requests that the Court order him to house arrest to complete his treatment and therapy. This would allow for his sentence to begin as scheduled and allow for Mr. Johnson to continue treatment with his trusted medical team.

17. Whether the Court extends Mr. Johnson's report date or orders house arrest to conclude treatment, Mr. Johnson requests a report date of February 1, 2024. This date is based on the medical advice and recommendation of Mr. Johnson's surgeon, Dr. Wojcik. *Exhibit A*. Mr. Johnson recognizes this is a report date later in time than previously requested, but the later date recommended by Dr. Wojcik is evidence of the fluid nature of Mr. Johnson's recovery and his future needs.

18. The risk of Mr. Johnson not treating with his medical team, as directed by those most familiar with his health and condition, is substantial.

19. More generally, the risk of Mr. Johnson not receiving the treatment he needs could result in extreme consequences.

20. Should the Court deny the foregoing requests altogether, Mr. Johnson requests that the Court order BOP to honor Dr. Wojcik's lifting restrictions and provide all the therapy and treatment Mr. Johnson needs for recovery.

WHEREFORE, Defendant, Rick Johnson, respectfully requests that this Court delay his self-surrender report date to February 1, 2024 for the foregoing reasons.

DONDZILA LAW, PLLC

Date: November 15, 2023

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